



OPERATIONAL MEMO

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TITLE: NOTICE OF ACTION (803) AND RECIPIENT APPEALS

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**DIVISION AND OFFICE: CASE MANAGEMENT AND QUALITY PERFORMANCE
DIVISION, OFFICE OF COMMUNITY LIVING**

PROGRAM AREA: CASE MANAGEMENT SECTION

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Purpose and Audience:

This memo provides Home and Community-Based Services (HCBS) case managers an overview of the regulations for Recipient Appeals. This memo contains changes to Recipient Appeals regulations since June 2018.

Background:

This memo provides broad Department clarification for HCBS case managers on the regulations for Recipient Appeals. The Department of Health Care Policy and Financing (Department) provided a training to HCBS case managers in June 2018 titled [Notice of Action \(803\) and Appeals](#). Changes were made to the Recipient Appeals regulations since the June 2018 training and those changes are included in this memo. The complete regulations for Recipient Appeals is found in [10 CCR 2505-10 8.057](#).

Definitions:

Action means a termination, suspension or reduction of Medicaid, eligibility or covered services.

Date of action (effective date) means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective.

Notice means a written statement which contains:

1. A statement of what action the Department or its designee intends to take;
2. The reasons for the intended action;

3. The specific regulations that support, or the change in federal or state law that requires the action;
4. An explanation of:
 - a. The individual's right to request an evidentiary hearing if one is available; or
 - b. In cases of an action based on a change in law, the circumstances under which a hearing will be granted.
5. The method by which the individual may obtain a hearing;
6. That the individual may represent himself/herself or use legal counsel, a relative, a friend, or other spokesman at the hearing;
7. An explanation of the circumstances under which Medicaid is continued if a hearing is requested; and
8. An explanation of the applicant's or recipient's right to a county or service agency dispute resolution conference.

Request for a hearing means a clear expression by the applicant or recipient, or his/her authorized representative that he/she wants an opportunity to present his/her case to a reviewing authority.

Information/Procedure:

- A notice of action shall be mailed at least 10 calendar days before the date of an intended action (effective date).
- An individual shall have an opportunity for a hearing where an application for services is denied, is not acted upon with reasonable promptness, or the recipient believes the action is erroneous.
 - An individual may request an expedited hearing if the appeal involves an issue where the standard timeframe may seriously jeopardize the applicant/recipient's life, health or ability to regain, attain, and maintain maximum function.
 - An individual does not have the right to an opportunity for hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients.
- The request for a hearing shall be in writing, filed with the Office of Administrative Courts within 60 calendar days of the date of the notice of action (effective date), and contain:
 1. The recipient or applicant's name, address and State Identification Number, if applicable;
 2. The action, denial or failure to act promptly on which the requested appeal is based; and

3. The reason for appealing the action, denial or failure to act promptly.
- If the recipient or applicant makes an oral request for a hearing to the Department or its designee, the Department or its designee shall prepare a written request for the individual's signature or have the individual prepare such a request.
 - When a recipient requests a hearing before the date of action, the recipient's services may not be terminated or reduced until a final agency decision is rendered after the hearing unless it is determined at the hearing that the sole issue is one of federal or state law or policy and the recipient is promptly informed that services are to be terminated or reduced pending the hearing decision.
 - If the recipient requests a hearing not more than 10 days after the date of action (effective date), the recipient's services may be continued or reinstated until a final agency decision is rendered if the recipient provides verification, in the form of a signed statement with supporting documentation, of one of the following circumstances:
 1. The recipient's life, health, or safety will be seriously impacted by the loss of benefits.
 2. The recipient was unable to request a hearing before the date of action due to the recipient's disability or employment.
 3. The recipient's caregiver or their authorized representative was unable to request a hearing before the date of action due to their health or employment.
 4. The recipient did not receive the notice prior to the effective date of the intended action.
 - The Department or its designee may institute recovery procedures against the applicant or recipient to recoup the cost of any services furnished the recipient when the action is sustained by the final agency decision.
 - Hearings related to an applicant or recipient's disability determination, level of care determination or target group eligibility shall be held within 20 calendar days after the Office of Administrative Courts receives the request for a fair hearing unless the client demonstrates good cause for postponement of the hearing.
 - Under no circumstances shall the hearing be conducted more than 45 calendar days after receipt of the request for a fair hearing.
 - Conference telephone hearings may be conducted as an alternative to face-to-face hearings.
 - All applicable provisions of the face-to-face hearing shall apply to telephone hearings.

- The hearing shall be private unless the applicant or recipient requests, on the record, that the hearing be open to the public.
- The recipient or applicant or his/her authorized representative shall be entitled to examine the complete case file and any other documents to be used at hearing at a reasonable time before the hearing or during the hearing.
 - Documents and information that are confidential as a matter of law shall be exempt from this requirement unless they are to be offered as evidence during the hearing.
- The request for hearing shall be denied or dismissed if the applicant or recipient withdraws the request in writing or fails to appear at a scheduled hearing without good cause.
 - Good cause shall mean a sudden severe illness, an accident, or other particular occurrence which, by its emergent nature and drastic effect, prevented appearance at the hearing.
 - The applicant or recipient shall have 10 calendar days from the date of the notice of dismissal to explain, in a letter to the Administrative Law Judge, the reason for his/her failure to appear.
 - If the Administrative Law Judge finds that there was good cause for the nonappearance, another hearing date shall be scheduled.
- After the hearing, the Administrative Law Judge shall promptly prepare and issue a written Initial Decision and file it with the Office of Appeals of the Department.
 - Initial decisions shall be based exclusively on evidence introduced at the hearing.
 - The Initial Decision following a disability determination hearing, a level of care denial hearing or a target group eligibility hearing shall be issued within 20 calendar days of the hearing date.
 - The Initial Decision shall be in writing and summarize the facts, identify the regulations and evidence supporting the decision, and advise the applicant/recipient that failure to file exceptions to the provisions of the Initial Decision shall waive the right to seek judicial review of a final agency decision affirming those provisions.
- The Department's Office of Appeals will promptly serve the Initial Decision to each party to the fair hearing by first class mail. This includes the Department even if the Department has not previously appeared as a party to the appeal.
 - Any party seeking to reverse, modify or remand the Initial Decision shall file exceptions with the Office of Appeals within 15 calendar days, plus 3 calendar days for mailing, of the date the Initial Decision is mailed to the parties.

- Exceptions to Initial Decisions shall be in writing and shall state the specific grounds for reversal, modification or remand of the Initial Decision.
- The Office of Appeals shall promptly serve a copy of the exceptions to each party by first class mail.
- Each party may file a written response to an exception filed by another party within 10 calendar days from the date the exceptions were mailed.
- Case Management Agencies shall file exceptions when applicable and include all relevant information.
- The Office of Appeals will issue a Final Agency Decision within 90 calendar days from the date the request for a hearing is received, unless an extension has been granted to the applicant or recipient.
 - In those cases, the 90 calendar day period shall be increased accordingly.
 - For expedited hearings, the Office of Appeals shall issue a Final Agency Decision within 3 calendar days from the date the request for an expedited hearing is received.
- The applicant or recipient shall be provided, in writing, a copy of the Final Agency Decision, notification of his/her right to seek judicial review, and the effective date of the Final Agency Decision.
 - For purposes of requesting judicial review, the effective date of the Final Agency Decision shall be the third day after the date the decision is mailed to the parties, even if the third day falls on Saturday, Sunday or a legal holiday.
 - If the Final Agency Decision is favorable to the applicant or recipient, corrective action shall be taken within three working days after the effective date of the Final Agency Decision, retroactive to the date the incorrect action was taken.
- A party may file a motion for reconsideration of a Final Agency Decision with the Office of Appeals upon a showing of good cause for failure to file exceptions to the Initial Decision within the allowed 15 calendar day period or upon a showing that the Final Agency Decision is based upon a clear or plain error of fact or law.
 - The motion for reconsideration shall be filed, in writing, with the Office of Appeals within 15 calendar days of the date that the Final Agency Decision is mailed to the parties.
 - The motion shall state the specific grounds for reconsideration.

Attachments:

None

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